

Court of Appeals, State of Michigan

ORDER

People of MI v Derrick Lamar McCoy

Docket No. 283953

LC No. 06-006798-FC

Joel P. Hoekstra
Presiding Judge

William B. Murphy

Richard A. Bandstra
Judges

Pursuant to MCR 7.205(D)(2), in lieu of granting the delayed application for leave to appeal, the Court REMANDS this case to the Kent Circuit Court for a determination of whether Appellant is indigent and, if so, for the appointment of appellate counsel, in light of *Halbert v Michigan*, 545 US 605; 125 S Ct 2582; 162 L Ed 2d 552 (2005). Appointed counsel may file an application for leave to appeal with this Court, and/or any appropriate postconviction motions in the trial court, within six months of the date of the circuit court's order appointing counsel. Furthermore, appointed counsel may reassert the issues raised by Appellant in his current application. This order has immediate effect. MCR 7.215(F)(2). The Court does not retain jurisdiction.

Hoekstra, P.J., (*dissenting*).

I would deny the delayed application for lack of merit in the grounds presented. Further, I would conclude that the trial court did not err in denying defendant's request for court-appointed appellate counsel for failure to comply with the time requirements of MCR 6.425(G)(i)(c), because unlike the majority, I am not persuaded that the denial of court-appointed appellate counsel on that basis is controlled by the holding in *Halbert v Michigan*, 545 US 605; 125 S Ct 2582; 162 L Ed 2d 552 (2005).



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JUL 21 2008

Date

Sandra Schultz Mengel
Chief Clerk